

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LETICIA DE GUZMAN,) Case No. C07-496-TSZ-JPD
Plaintiff,)
v.)
MICHAEL J. ASTRUE, Commissioner,) REPORT AND RECOMMENDATION
Social Security Administration,)
Defendant.)

Plaintiff Leticia De Guzman appeals the final decision of the Commissioner of the Social Security Administration (“Commissioner”) which denied her applications for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-33 and 1381-83f, after a hearing before an administrative law judge (“ALJ”). For the reasons set forth below, the Court recommends that the Commissioner’s decision be AFFIRMED, and this case be dismissed with prejudice.

I. FACTS AND PROCEDURAL HISTORY

At the time of her second hearing, plaintiff was a fifty-nine year-old woman with a fourth grade education. Administrative Record (“AR”) at 618. Her past work experience includes employment as an assembler/packer at Microsoft, and as a hotel housekeeper. AR at 147. Plaintiff was last gainfully employed in January 2003. AR at 120.

Plaintiff asserts that she is disabled due to chronic stomach and abdominal pain and

01 cervical disorder, post-surgical complications and mental health disorders. She asserts an
02 amended onset date of January 30, 2003. AR at 14.

03 After the Commissioner denied plaintiff's claim initially and on reconsideration,
04 plaintiff requested a hearing. The initial hearing took place on May 3, 2005. AR at 599-613.
05 In November 2005, the ALJ issued an adverse decision. AR at 33-43. The plaintiff requested
06 administrative review by the Appeals Council, and in July 2006, the Appeals Council
07 remanded the case back to the ALJ to take further evidence and give further consideration to
08 the plaintiff's maximum residual functional capacity ("RFC"), reconsider the medical evidence,
09 and reevaluate the subjective complaints and her past relevant work. AR at 45-47. A second
10 hearing took place on December 8, 2006. AR 614-49. On January 11, 2007, the ALJ issued a
11 decision finding plaintiff not disabled and denied benefits based on his finding that plaintiff
12 could perform a specific job existing in significant numbers in the national economy. AR at 9-
13 23.

14 Plaintiff again requested administrative review of the ALJ's decision. The Appeals
15 Council considered the request, but in an opinion dated February 7, 2007, denied the relief
16 requested and adopted the ALJ's January 11, 2007 decision. AR at 9-11. After two hearings
17 and two reviews by the Appeals Council, plaintiff has filed this action challenging the
18 Commissioner's decision. Dkt. No. 3.

19 II. JURISDICTION

20 Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§
21 405(g) and 1383(c)(3).

22 III. STANDARD OF REVIEW

23 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of
24 social security benefits when the ALJ's findings are based on legal error or not supported by
25 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th
26 Cir. 2005). "Substantial evidence" is more than a scintilla, less than preponderance, and is

01 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
 02 *Richardson v. Perales*, 402 U.S. 389, 201 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750
 03 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in
 04 medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*,
 05 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a
 06 whole, it may neither reweigh the evidence nor substitute its judgment for that of the
 07 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence
 08 is susceptible to more than one rational interpretation, it is the Commissioner's conclusion that
 09 must be upheld. *Id.*

10 The Court may direct an award of benefits where "the record has been fully developed
 11 and further administrative proceedings would serve no useful purpose." *McCartey v.*
 12 *Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002) (citing *Smolen v. Chater*, 80 F.3d 1273,
 13 1292 (9th Cir. 1996)). The Court may find that this occurs when:

14 (1) the ALJ has failed to provide legally sufficient reasons for rejecting the
 15 claimant's evidence; (2) there are no outstanding issues that must be resolved
 16 before a determination of disability can be made; and (3) it is clear from the
 17 record that the ALJ would be required to find the claimant disabled if he
 18 considered the claimant's evidence.

19 *Id.* at 1076-77; *see also Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000) (noting that
 20 erroneously rejected evidence may be credited when all three elements are met).

IV. EVALUATING DISABILITY

21 As the claimant, Ms. De Guzman bears the burden of proving that she is disabled
 22 within the meaning of the Social Security Act (the "Act"). *Meanel v. Apfel*, 172 F.3d 1111,
 23 1113 (9th Cir. 1999) (internal citations omitted). The Act defines disability as the "inability to
 24 engage in any substantial gainful activity" due to a physical or mental impairment which has
 25 lasted, or is expected to last, for a continuous period of not less than twelve months. 42
 26 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if her
 27 impairments are of such severity that she is unable to do her previous work, and cannot,

01 considering her age, education, and work experience, engage in any other substantial gainful
 02 activity existing in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B); *see*
 03 *also Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999).

04 The Commissioner has established a five step sequential evaluation process for
 05 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§
 06 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At
 07 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at
 08 any step in the sequence, the inquiry ends without the need to consider subsequent steps.
 09 Step one asks whether the claimant is presently engaged in “substantial gainful activity.” 20
 10 C.F.R. §§ 404.1520(b), 416.920(b).¹ If she is, disability benefits are denied. If she is not, the
 11 Commissioner proceeds to step two. At step two, the claimant must establish that she has one
 12 or more medically severe impairments, or combination of impairments, that limit her physical
 13 or mental ability to do basic work activities. If the claimant does not have such impairments,
 14 she is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe
 15 impairment, the Commissioner moves to step three to determine whether the impairment
 16 meets or equals any of the listed impairments described in the regulations. 20 C.F.R. §§
 17 404.1520(d), 416.920(d). A claimant whose impairment meets or equals one of the listings for
 18 the required twelve-month duration requirement is disabled. *Id.*

19 When the claimant’s impairment neither meets nor equals one of the impairments listed
 20 in the regulations, the Commissioner must proceed to step four and evaluate the claimant’s
 21 RFC. 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the Commissioner evaluates the physical
 22 and mental demands of the claimant’s past relevant work to determine whether she can still
 23 perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the claimant is able to perform
 24 her past relevant work, she is not disabled; if the opposite is true, then the burden shifts to the
 25

26 ¹ Substantial gainful activity is work activity that is both substantial, i.e., involves significant physical and/or mental activities, and gainful, i.e., performed for profit. 20 C.F.R. § 404.1572.

01 Commissioner at step five to show that the claimant can perform other work that exists in
02 significant numbers in the national economy, taking into consideration the claimant's RFC,
03 age, education, and work experience. 20 C.F.R. §§ 404.1520(g), 416.920(g); *Tackett*, 180
04 F.3d at 1099, 1100. If the Commissioner finds the claimant is unable to perform other work,
05 then the claimant is found disabled and benefits may be awarded.

V. DECISION BELOW

On November 25, 2005, the ALJ issued a decision finding:

1. The claimant meets the non-disability requirements for a period of disability and Disability Insurance Benefits set forth in Section 216(i) of the Social Security Act and is insured for benefits through the date of this decision.
 2. The claimant has not engaged in substantial gainful activity since the alleged onset of disability.
 3. The claimant's chronic stomach/abdominal pain status-post surgery is considered "severe" based on the requirements in 20 CFR §§ 404.1520(c) and 416.920(c).
 4. These medically determinable impairments do not meet or medically equal one of the listed impairments in Appendix 1, Subpart P, Regulation No. 4.
 5. The undersigned finds the claimant's allegations regarding her limitations are not totally credible for the reasons set forth in the body of the decision.
 6. The claimant retains the residual functional capacity for a full range of light work. She can occasionally lift and/or carry 20 pounds, frequently lift and/or carry 10 pounds, stand and/or walk about 6 hours in an 8-hour workday, and sit about 6 hours in an 8-hour workday.
 7. The claimant's past relevant work as a packing/assembly worker and a housekeeper do not require the performance of work-related activities precluded by her residual functional capacity (20 CFR §§ 404.1565 and 416.965).
 8. The claimant's medically determinable impairments do not prevent her from performing her past relevant work as a packing/assembly worker and a housekeeper.
 9. The claimant was not under a "disability" as defined in the Social Security Act, at any time through the date of the decision (20 CFR §§ 404.1520(f) and 416.920(f)).

01 AR at 42-43.

02 VI. ISSUES ON APPEAL

03 The two issues on appeal are:

- 04 1. Did the ALJ err in making an adverse credibility determination?
- 05 2. Did the ALJ err in his evaluation of the medical opinions of Drs.
06 Popanz, Mirza and Vaught?

Dkt. No. 21 at 17, 22.

07 VII. DISCUSSION

08 A. The ALJ Did Not Err in Making an Adverse Credibility Determination

09 Credibility determinations are particularly within the province of the ALJ. *Andrews*, 53
10 F.3d at 1043. Nevertheless, when an ALJ discredits a claimant's subjective symptom
11 testimony, he must articulate specific and adequate reasons for doing so. *Greger v. Barnhart*,
12 464 F.3d 968, 972 (9th Cir. 2006). The determination of whether to accept a claimant's
13 subjective symptom testimony requires a two-step analysis. 20 C.F.R. §§ 404.1529, 416.929;
14 *Smolen*, 80 F.3d at 1281; Social Security Ruling ("SSR") 96-7p, 1996 WL 374186, *2-3.
15 First, the ALJ must determine whether there is a medically determinable impairment that
16 reasonably could be expected to cause the claimant's symptoms. 20 C.F.R. §§ 404.1529(b),
17 416.929(b); *Smolen*, 80 F.3d at 1281-82; SSR 96-7p, 1996 WL 374186, *2-3. Once a
18 claimant produces medical evidence of an underlying impairment, the ALJ may not discredit
19 the claimant's testimony as to the severity of symptoms solely because they are unsupported
20 by objective medical evidence. *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en
21 banc). Absent affirmative evidence that the claimant is malingering, the ALJ must provide
22 "clear and convincing" reasons for rejecting the claimant's testimony. *Smolen*, 80 F.3d at
23 1284; *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1988).

24 An ALJ is not "required to believe every allegation of disabling pain" or other non-
25 exertional impairment. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). When evaluating a
26 claimant's credibility, however, the ALJ "must specifically identify what testimony is not

credible and what evidence undermines the claimant's complaints." *Greger*, 464 F.3d at 972 (internal quotation omitted). General findings are insufficient. *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at 722. The ALJ may consider "ordinary techniques of credibility evaluation," including the claimant's reputation for truthfulness, inconsistencies in testimony or between her testimony and conduct, daily activities, work record, and the testimony from physicians and third parties concerning the nature, severity, and effect of the symptoms of which she complains. *Smolen*, 80 F.3d at 1284.

Here, there are no allegations that plaintiff was malingering, therefore the ALJ was required to provide clear and convincing reasons for discounting her testimony. *Reddick*, 157 F.3d at 722. The ALJ found that plaintiff's medically determinable impairments could reasonably be expected to produce the symptoms she alleged, but concluded that plaintiff's "statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible." AR at 20. In making this determination, the ALJ considered all symptoms alleged by plaintiff that could "reasonably be accepted as consistent" with the objective medical evidence and other evidence presented in the record, based on the requirements of 20 C.F.R. § 404.1527 and SSRs 96-4p and 96-7p.² AR at 20.

The ALJ found that the plaintiff's testimony about her limitations was not entirely credible. In doing so, the ALJ noted that the plaintiff's subjective complaints were (a) not supported by the activities of daily living that were inconsistent with the claimed limitations; (b) evidence of symptom exaggeration; and (c) not supported by objective evidence.

21 1. *Daily Living Activities*

22 The ALJ found that the credibility of plaintiff's testimony concerning her limitations

24 ² Social Security Rulings do not have the force of law. Nevertheless, they "constitute
25 Social Security Administration (SSA) interpretations of the statute it administers and of its own
26 regulations," and are binding on all SSA adjudicators. 20 C.F.R. § 402.35(b); *Holahan v. Massanari*, 246 F.3d 1195, 1203 n.1 (9th Cir. 2001). Accordingly, such rulings are given deference by the courts "unless they are plainly erroneous or inconsistent with the Act or regulations." *Han v. Bowen*, 882 F.2d 1453, 1457 (9th Cir. 1989).

01 was undermined because she was able to “clean for one hour, vacuum, dust, sweep, wash
02 dishes and clean the bathroom.” AR at 20. In addition, he noted that the plaintiff reads,
03 watches television, visits with family and a few friends, and is able to take public
04 transportation. AR at 40. Accordingly, the ALJ concluded that the plaintiff was “engaging in
05 a normal level of daily activity and activities that require concentration.” AR at 40. The ALJ
06 also relied on the fact that the plaintiff was able to continue to engage in work after the alleged
07 onset date, from which he concluded that the plaintiff’s daily activities have been greater than
08 reported. AR at 40.

09 The ALJ is permitted to draw an adverse inference as to the plaintiff’s credibility when
10 the claimant is able to engage in daily activities inconsistent with an alleged impairment.
11 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). The ALJ did not err by finding that the
12 plaintiff’s daily activities were inconsistent with the impairments alleged, thereby making an
13 appropriate adverse credibility determination.

14 2. *Symptom Exaggeration*

15 Throughout his opinion, the ALJ cited to medical records that indicated the plaintiff
16 was responding to treatment in a way that was inconsistent with her subjective symptom
17 testimony. The ALJ noted in his initial decision that “[b]eyond the abdominal surgery in 1995,
18 her treatment has been essentially routine and/or conservative in nature. Despite her reports of
19 relatively serious problems, treating and examining physicians found no or only mild objective
20 findings and observed no major difficulties with functioning during the examinations.” AR at
21 39. An ALJ can take into account a claimant’s exaggeration of pain experienced or limitations
22 produced thereby when assessing credibility. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th
23 Cir. 2001).

24 In addition, the ALJ cited to medical reports that indicated that the plaintiff had
25 cancelled multiple appointments for physical therapy. AR at 265. Failure to follow-up on
26 treatment can be considered in making an adverse credibility determination. *Burch*, 400 F.3d

01 at 681.

02 The ALJ also noted that Dr. Popanz did not believe the plaintiff was cooperating fully
03 during an examination. AR at 36. While failure to give maximum effort during a consultative
04 evaluation can be considered as an indicator of lack of credibility, in this case, it would not be
05 appropriate to do so. Dr. Popanz believed this was due to depression rather than to mental
06 conditions impacting the plaintiff. AR at 234. Accordingly, it was error for the ALJ to cite
07 this as a basis for lack of credibility. However, elimination of any one reason does not mean
08 that the ALJ's entire credibility assessment is improper. *Batson v. Commissioner*, 359 F.3d
09 1190, 1197 (9th Cir. 2004). Upon examining the record as a whole, this Court cannot
10 conclude that the ALJ erred in finding that the plaintiff's credibility was adversely impacted by
11 an exaggeration of symptoms.

12 3. *Lack of Objective Evidence*

13 As discussed above, an ALJ may not discredit the claimant's testimony as to the
14 severity of symptoms solely because they are unsupported by objective medical evidence.
15 However, an ALJ can take the lack of objective evidence in combination with other factors to
16 reach an adverse credibility determination. *Burch*, 400 F.3d at 680.

17 The ALJ (and as supported by the Appeals Council) took into consideration the entire
18 record, and found multiple occasions in which the plaintiff's complaints were not supported by
19 the objective medical evidence presented. The ALJ concluded that the plaintiff's inconsistent
20 statements, symptom exaggeration and lack of objective evidence discredited the plaintiff's
21 testimony. The ALJ's use of this method of analysis to make credibility determinations is
22 proper. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ's adverse
23 credibility determination is supported by substantial evidence and must be affirmed.

24 B. The ALJ Did Not Err in His Evaluation of the Medical Evidence

25 In her twenty-four page brief, the plaintiff claims, in what almost appears to be two-
26 page afterthought, that the ALJ failed to properly evaluate the medical opinions of three

01 physicians, Drs. Popanz, Mirza, and Vaught.³

02 1. *Standards of Review*

03 As a matter of law, more weight is given to a treating physician's opinion than to that
 04 of a nontreating physician because a treating physician "is employed to cure and has a greater
 05 opportunity to know and observe the patient as an individual." *Magallanes*, 881 F.2d at 751;
 06 *see also Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). "Likewise, greater weight is
 07 accorded to the opinion of an examining physician than a non-examining physician." *Andrews*,
 08 53 F.3d at 1041; *see also* 20 C.F.R. § 416.927(d)(1).

09 A treating physician's opinion, however, is not necessarily conclusive as to either a
 10 physical condition or the ultimate issue of disability, and can be rejected, whether or not that
 11 opinion is contradicted. *Magallanes*, 881 F.2d at 751. If an ALJ rejects the opinion of a
 12 treating or examining physician, the ALJ must give clear and convincing reasons for doing so
 13 if the opinion is not contradicted by other evidence, and specific and legitimate reasons if it is.
 14 *Reddick*, 157 F.3d at 725. "This can be done by setting out a detailed and thorough summary
 15 of the facts and conflicting clinical evidence, stating his interpretation thereof, and making
 16 findings." *Id.* (citing *Magallanes*, 881 F.2d at 751). The ALJ must do more than merely state
 17 his conclusions. "He must set forth his own interpretations and explain why they, rather than
 18 the doctors', are correct." *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir.
 19 1988)). Such conclusions must at all times be supported by substantial evidence. *Reddick*,
 20 157 F.3d at 725.

21 2. *Dr. Popanz*

22 Timothy Popanz, Ph.D. is a Washington State Division of Disability psychologist who

24 ³ In her opening brief, plaintiff also claimed that the ALJ failed to properly evaluate the
 25 medical opinion of Dr. Wainstein, but this argument was withdrawn in the reply brief. Dkt. No.
 26 25 at 10. Indeed, Dr. Wainstein provided a functional assessment of the plaintiff that was
 consistent with the RFC adopted by the ALJ, and his assessment was accorded significant weight
 by the ALJ. AR at 41. This was also consistent with the findings of the state reviewing
 physicians. AR at 216.

01 examined the plaintiff in July 2003. AR at 233-49. He concluded that the plaintiff was
 02 suffering from depression, anxiety and panic attacks. He concluded that she was “moderately
 03 impaired in her abilities to reason, understand and remember” and “severely impaired in her
 04 abilities to sustain concentration and persist at tasks. She is moderately to severely impaired in
 05 her abilities to interact socially and adapt to situations.” AR at 235.

06 The ALJ rejected Dr. Popanz’s diagnoses. AR at 19. The ALJ did not find the
 07 opinion persuasive, because there was, in the ALJ’s opinion, minimal evidence to establish the
 08 diagnoses. The ALJ noted that little detail was provided regarding the specific diagnostic
 09 criteria by Dr. Popanz. In addition, although the plaintiff claimed to be suffering from the
 10 mental symptoms since 1995, she continued to work at a gainful occupation until many years
 11 thereafter. Moreover, just three weeks before she saw Dr. Popanz, plaintiff said her
 12 depression had been in remission for three years prior to the month before her evaluation. AR
 13 at 19.

14 The Appeals Council affirmed the ALJ’s reasoning. It noted:

15 The Administrative Law Judge’s discussion of Dr. Popanz’s opinions for
 16 mental limitations is supported by the record with regard to an essential lack of
 treatment history and claimant’s work activity between 1996 and 2003.
 17 Further, clinic notes after this consultant’s examination reveal that the
 claimant’s depression was quite well controlled by April and June 2004 and she
 denied depression by July 2004. . . . More recent clinic records show that in
 18 January 2006 medications were working well for depression with mood good.

19 AR at 10 (internal citations omitted).

20 The ALJ’s opinion regarding Dr. Popanz, and as supplemented by the Appeals Council
 21 opinion, is supported by substantial evidence, as that term is defined, and must be affirmed.

22 3. *Dr. Mirza*

23 In October 2004, the plaintiff was seen for neck surgery follow-up by Sohail K. Mirza,
 24 M.D. In a note, Dr. Mirza wrote: “No work for 1 year after surgery (5/20/05) and permanent
 25 limits on bending, lifting, carrying.” AR at 462. At the hearing, the ALJ called Dr. Robert
 26 Nielsen, M.D. to testify as a Medical Expert (“ME”). The ME testified that he found nothing

01 in her medical record that would preclude the plaintiff from performing "light work." AR at
 02 626.

03 After the first hearing, the ALJ was directed by the Appeals Council to reconsider the
 04 plaintiff's residual functional capacity in light of all treating source opinions. AR at 13. The
 05 ALJ did so, concluding that Dr. Mirza's opinion was "clearly exaggerated . . . and
 06 unsupported on a longitudinal basis." AR at 21. He also found that the medical opinion was
 07 premised on plaintiff's subjective complaints, and as discussed above, the ALJ concluded that
 08 the plaintiff lacked credibility on these matters.

09 Upon review, the Appeals Council also sustained the ALJ's decision regarding Dr.
 10 Mirza.

11 In this regard, the opinion for no work for 12 months to recover from the
 12 cervical fusion in May 2004 is inconsistent with the medical findings in October
 13 2004 for good fusion and hardware placement by x-rays and by November
 14 2004 the pain was described as only mild. Later x-rays revealed solid fusion
 15 and no hardware failure. In light of the adequate evaluations of the various
 16 physician and psychological opinions of record, the Council finds that the
 recommended findings for a residual functional capacity for light work
 supported by the record, including the opinions provided by the state agency
 medical sources, and examining consultant, and the medical expert at the
 hearing.

17 AR at 10 (internal citations omitted).

18 The ALJ's opinion regarding Dr. Mirza, and as supplemented by the Appeals Council
 19 opinion, is supported by substantial evidence, as that term is defined, and must be affirmed.

20 4. *Dr. Vaught*

21 In her opening brief, the plaintiff argued that the ALJ did not address a one-page
 22 physical capacity evaluation dated in May 2005, from Meridale A.Vaught, M.D. AR at 499;
 23 Dkt. No. 21 at 24. The Commissioner pointed out that the ALJ did, in fact, discuss this
 24 report, and provided clear and convincing reasons to reject the one-page form. Dkt. No. 24 at
 25 12. The ALJ rejected Dr. Vaught's evaluation because the form did not indicate what
 26 activities or forms of measure were used to determine the limitations found, that it was simply
 a check-the-box form with no clinical or objective support in the record, and that it was

01 inconsistent with medical evidence of record, including a November 2004 opinion of Dr.
02 Vaught. AR at 41. Opinions in formats such as check-the-box forms are entitled to little
03 weight. *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996). In her reply brief, the plaintiff
04 suggests that the ALJ should have re-contacted Dr. Vaught for additional information. While
05 an ALJ has an obligation for fully develop an ambiguous record, the plaintiff's suggestion that
06 recontact is necessary when an ALJ provides clear and convincing reasons for disagreeing with
07 a physician is not supported by law.

5. Summary Regarding Medical Opinion Evaluations

The role of this Court is limited, and “constrained to review the reasons the ALJ asserts.” *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). The Court may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Robbins v. Social Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Thomas*, 278 F.3d at 954. While it is possible to interpret the evidence as urged by the plaintiff, it simply cannot be said that this is the only rational interpretation. *See id.*

VIII. CONCLUSION

17 The Commissioner's denial of social security benefits in this case was free of reversible
18 legal error and supported by substantial evidence in the record as a whole. Accordingly, the
19 Court recommends that the decision of the Commissioner be AFFIRMED, and plaintiff's case
20 DISMISSED with prejudice. A proposed order accompanies this Report and
21 Recommendation.

DATED this 22nd day of February, 2008.

James P. Donohue
JAMES P. DONOHUE
United States Magistrate Judge